

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 11623 of 2004

ORDER:

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Heard Smt. N.Shoba, learned counsel appearing for the petitioner and the learned Government Pleader for Panchayat Raj appearing on behalf of the respondents 1 to 3, and Sri N.Bharath Babu, learned counsel appearing for the contesting respondent, who has been subsequently impleaded as fourth respondent as per the Court Order in W.P.M.P. No. 19493 of 2004 dated 26.08.2004.

The petitioner, who is a holder of lease for quarrying of sand in respect of Pulligadda reach-I, Avanigadda mandal, Krishna district, filed this Writ Petition to declare the action of the respondents 1 to 3 herein in refusing the petitioner from carrying on quarry of sand as per the proceedings dated 24.06.2004; and seeking to assail the correctness of the fresh auction notification dated 26.06.2004, as bad, illegal and void apart from being violative of the principles of natural justice and in the teeth of Rule 9(P) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short, 'the Rules, 1966').

The case of the petitioner, in brief, is to the effect that initially the question involved is in regard to the right of the petitioner to carry on quarry for second year in the aforesaid reach, which was notified for the purpose of conducting auction on 24.02.2003 for a period of two years. The petitioner submitted his tender and bid for Rs. 3,65,000/-, which was accepted being the highest. Accordingly, the petitioner paid necessary deposits in terms of Rule 9(H)(1) of the Rules, 1966, following which confirmation orders were issued on 06.05.2003 and the stamp duty was paid on the calculation of the amount for a period

of two years and the agreement was entered into on 5th and 6th of May, 2003, contemplating it for a period of two years with a condition to deposit the second year lease amount of Rs. 4,01,500/-, 45 days prior to the expiry of the first year lease period. The lease period expires on 05.05.2005. Therefore, in accordance with the condition no.5 of the agreement and the Rules, 1966, the petitioner deposited Rs. 4,01,500/- on 22.03.2004 and requested for orders for carrying on quarry for the later year. However, without considering the same and passing any orders thereon, the third respondent issued a telegraphic intimation on 15.04.2004 to stop quarry of Pulligadda-I reach from 06.05.2004, on the ground of expiry of period. Though the said auction was challenged earlier in Writ Petition No. 8154 of 2004, the same was dismissed on 28.04.2004 on the ground that the District Panchayat Officer, being the convener of the District Level Committee, can give necessary intimation. Now, accordingly, the third respondent herein issued the impugned proceedings dated 24.06.2004 refusing permission for the second year on the ground that the proposals put forth were rejected by the District Level Committee on 17.06.2004 for the second year for the reason of illegal quarrying and they decided to merge the Pulligadda reach and put the entire reach for auction. Consequently, a notification was issued on 26.06.2004 inviting fresh sealed tenders for conducting auction for a period of one year.

The case of the petitioner is that having regard to the fact that petitioner's lease subsists, which includes the second year, and he, having deposited necessary amount and awaiting orders, the action of conducting fresh auction or stopping the petitioner's quarrying, is wholly unsustainable. It is pointed out that there is no notice or intimation given before any such impugned action is taken nor any cancellation of the lease existing in favour of the petitioner. Further, it is his contention that when once the lease is granted for a period of two years, the same can not be interdicted in such a way. Hence, the Writ Petition.

This Court, at the time of admission, granted interim direction on 13.07.2004 to the effect that the auction as scheduled may go on, but the same shall not be finalised in respect of the reach in question. On filing of the counter affidavits on behalf of the contesting respondents and the vacate stay application, the main Writ Petition was heard finally at the request of the learned counsel on either side.

In the counter affidavit filed on behalf of the respondents 1 to 3, it is stated that admittedly the first year lease period in favour of the petitioner was from 06.05.2003 to 05.05.2004 and therefore, it expired. The second year lease had to be commenced from 06.05.2004. However, in the mean while, there has been complaint about illegal quarrying of sand in Pulligadda-II sand reach by the petitioner and therefore, it was decided to take necessary action. Hence, the action was taken to stop illegal quarrying. There has been correspondence with the other officials including the police and the Executive Engineer (Irrigation), and it has been decided to conduct a comprehensive auction. Therefore, the petitioner was given intimation on 15.04.2004 to stop quarrying since the first year lease period expired, and against the same, the petitioner's earlier Writ Petition was dismissed. However, the request of the petitioner for extension for second year was placed before the District Level Committee in its meeting on 17.06.2004. As per the resolution no.II of the committee and on the basis of the reports furnished by the Mandal Revenue Officer and the Executive Engineer (Irrigation) suggesting clubbing of the reaches, the petitioner was accordingly informed and therefore, request for extension for second year was rejected. Further, the petitioner was also informed to take back the amount of Rs. 4,01,500/- from the third respondent. Hence, a fresh notification was issued as per the Rules issued in G.O. Ms.No.1, I & C dated 01.01.2001, for conducting public auction. In view of the same, the petitioner can not seek any indulgence in this Court. Further, as per the auction conducted on 15.07.2004, the highest bid amount touched about Rs. 21,00,000/- and it went in favour of one

K.Satyanarayana, who got impleaded himself as fourth respondent in the Writ Petition subsequently. In view of the same, there are no merits in the Writ Petition and the same is liable to be dismissed.

In the separate counter affidavit filed by the fourth respondent, it is stated that initially the lease was granted only for a period of one year, but not for two years. It is pointed out that when once the lease period for one year is expired, the petitioner has no right to seek any extension for the second year and he has no enforceable right for the subsequent year. Further, the petitioner unsuccessfully filed the earlier Writ Petition and having regard to the illegal quarrying going on, the two reaches have been merged and it is he, who became the highest bidder by offering Rs. 21,00,000/- for the year as against the estimated amount of Rs. 10,00,000/-, whereas the offer of the petitioner is far below the estimated amount and it will cause loss to the revenue of the Government. Hence, the Writ Petition is liable to be dismissed.

Considering the submissions made and on perusal of the material, the main question which requires to be considered in this Writ Petition is as to whether the petitioner holds any subsisting lease for the second year for the purpose of carrying on quarry of sand in the concerned route ?

There is no dispute in regard to the grant of initial lease in favour of the petitioner herein in the auction conducted on 24.02.2003 as per the notification issued in February, 2003 as the petitioner became the highest bidder. According to the petitioner, the said notification and the very auction were for a period of two years, but not for one year, as sought to be contended on behalf of the fourth respondent. Consequently, agreement was executed on 06.05.2003 for a period of two years, which expires by 05.05.2005. In terms of the clauses contained therein, the petitioner has already deposited amount of Rs. 4,01,500/- on 22.03.2004 and the same was accepted. In spite of the

lease granted for a period of two years and deposit of the amount for second year as contemplated thereunder, the respondents went back and sought to conduct fresh auction by asking the petitioner to stop the quarrying. There is also no dispute to the fact that the petitioner has unsuccessfully filed a Writ Petition No. 8154 of 2004 earlier.

It has been contended on behalf of the fourth respondent in the counter affidavit specifically to the effect that the auction conducted in February, 2003 was only for a period of one year, but not for two years and therefore, the petitioner has no enforceable right or claim. Whereas, conveniently, the counter affidavit filed on behalf of the respondents 1 to 3 is totally silent as to the period for which the tenders were invited in February, 2003 and the subsequent auction on 24.02.2003. It is quite silent in respect of the agreement entered into with the petitioner on 06.05.2003, which, according to the petitioner, was for two years. There is absolutely no explanation forthcoming on this aspect in the counter affidavit filed on behalf of the respondents 1 to 3. The very silence of the respondents 1 to 3 on this aspect makes the claim as sought to be made on behalf of the fourth respondent that the period of lease was for one year only, not acceptable. It is only with a view to sustain the impugned action, the respondents 1 to 3 remained silent as to the period for which the original lease was contemplated and given in favour of the petitioner. There is no dispute in regard to the agreement entered with the petitioner on 06.05.2003 and acceptance of deposit of Rs. 4,01,500/- made by the petitioner in terms thereof. In the circumstances, it has to be held that the lease of the petitioner is for a period of two years, but not for one year as sought to be contended on behalf of the fourth respondent.

Having regard to the fact that there is a subsisting lease, the same

can not be interdicted by the concerned authorities without taking any appropriate action either terminating or cancelling the same. Therefore, the impugned action is wholly not authorised under the law. Admittedly, no such proceedings have been initiated nor there is any prior notice given before any such action is taken against the petitioner directing him to stop quarrying. Except stating that there have been some complaints of illegal quarrying, the petitioner was not put to the notice nor was asked to explain in regard to any such illegal quarrying. In view of the same, the very action on the part of the respondents herein by issuing telegraphic orders on 15.04.2004 to stop quarrying followed by notification for conducting fresh auction on 26.06.2004, is totally in the teeth of the very subsisting lease and the Rules, 1966. Even prior to the rejection of renewal as per the proceedings dated 24.06.2004, the petitioner was not given any notice or opportunity. Apparently, the impugned action is sought to be justified on twin grounds, firstly, to the effect that there are complaints of illegal quarrying and secondly that there is merger of two reaches so as to fetch substantial amount to the revenue of the State. However, on either of these grounds, the petitioner was not put to any notice. Even the second ground of policy decision being taken by the Government, the same can not be given effect to in respect of a subsisting lease. In *Beg Raj Singh v. State of U.P. & others case*, considering the similar such situation, the Apex Court held that the Government having incurred obligation to grant lease for three years in accordance with its own policy decision, it can not decline to enforce the same merely because a little more revenue could be earned by resorting to auction. In the circumstances, it has to be held that the entire impugned action is wholly unjustified and illegal, and the petitioner is entitled to carry on the quarrying operation for the second year, which expires by 05.05.2005. It is needless to mention that if the petitioner is able to carry on the operation for the second year, the same shall not have to be given distinction by extending the period so as to allow him to complete the second year period.

The Writ Petition is, accordingly, allowed setting aside the impugned proceedings. No costs.

10.06.2005 (B.Prakash Rao, J.)

DRK